IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9074 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KHANDUBHAI THAKORBHAI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

MS. BANNA DUTTA WITH MR ANIL S DAVE for Petitioner

MR UR BHATT, AGP for respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 19/12/2000

ORAL JUDGEMENT

1. The petitioner has filed this petition under Article 226 of the Constitution challenging his detention order passed by the Police Commissioner, Surat City on 1st January, 2000 in exercise of powers conferred upon him under Sec. 3(1) of the Gujarat Prevention of Anti

Social Activities Act, 1985 (PASA for short) and the petitioner came to be detained from 10th of August, 2000 in pursuance of the above said order.

2. The detaining Authority took into consideration the investigation made in the crime registered against the petitioner under the Bombay Prohibition Act and statements of two witnesses, who on assurance of anonymity offered their statements before the concerned authority. From the above materials, the detaining authority came to the conclusion that the petitioner was dealing in selling illegal liquor by which harming the public health. It was further observed by the detaining authority that the petitioner was a headstrong person and hardened criminal and was obstruction to public peace. The petitioner therefore was declared as " bootlegger " within the meaning of Section 2(b) of the PASA Act. Therefore, the impugned order was passed against the petitioner.

3. Learned Advocate Ms. Banna Datta for the petitioner and learned AGP Mr. Udai Bhatt for the respondents were heard.

4. Amongst other contentions it was vehemently urged that the order of detention is vitiated by non-application of mind by the detaining authority. It was urged that the remedy of cancellation of bail was available to the detaining authority after releasing the petitioner on bail in the above said crime registered against the petitioner, but the detaining authority failed to consider this aspect of the case. Hence, due to non-application of mind by the detaining authority, the order of detention is required to be quashed.

5. In ZUBEDABIBI RASIDKHAN PATHAN vs.STATE OF GUJARAT, reported in 1995(2) GLR 1134 and again in LPA No. 1056 of 1999, in the case of YUNUSBHAI HASANBHAI CHANCHI vs. DISTRICT MAGISTRATE, decided on 15th of September, 1999, by Bench decision, this court observed that the provisions for the cancellation of bail as envisaged by Section 437(5) of the Cr.P.C. are far more wide in import and intent. The detaining authority was required to resort to this remedy available to him. Not resorting to this remedy, would amount to non-application of mind on the part of the detaining authority. In both the above said cases, order of detention came to be quashed on this ground alone.

6. In the present case also, the detaining authority failed to consider the aspect of cancellation of bail at all. The detaining authority only observed in the grounds of detention that the petitioner was released on bail and during the bail period also the detenu was likely to continue his bootlegging activities. Thus, without resorting to the less drastic remedy of cacellation of bail available to the detaining authority, the order of detention under the PASA Act came to be passed. This is obvious non-application of mind by the detaining authority qua relevant aspects of the case. The detention order therefore is required to be quashed and set aside.

7. For the above said reasons, this petition is allowed. The order passed by the Police Commissioner, Surat City on 1st of January, 2000 against the petitioner under the PASA Act is hereby ordered to be quashed and set aside. Petitioner - Khandubhai Thakorbhai Patel is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair